

## EXHIBIT 1

LAW OFFICES  
OF

**MCNEIL, SILVEIRA, RICE & WILEY**

AN ASSOCIATION INCLUDING PROFESSIONAL CORPORATIONS

RONALD A. SILVEIRA  
1948-2000

PATRICK J. MCNEIL  
A PROFESSIONAL CORPORATION

55 PROFESSIONAL CENTER PARKWAY, SUITE A

MARK J. RICE  
A PROFESSIONAL CORPORATION

SAN RAFAEL, CALIFORNIA 94903

NEIL W. WILEY

T-(415) 472-3434 F-(415) 472-1298

WWW.MSRWLAW.COM

April 11, 2007

**VIA FACSIMILE AND MAIL**

Ariana Seldman Hawbecker, Esq.  
DONAHUE GALLAGHER WOODS LLP  
300 Lakeside Drive, Suite 1900  
Oakland, CA 94612

Re: Nacio Systems, Inc. v. Herbert M. Gottlieb, et al.  
Marin County Superior Court Case No. CV070474

Dear Ms. Hawbecker:

Enclosed please find an executed Notice and Acknowledgment of Receipt on behalf of Mr. Gottlieb of the above referenced complaint.

As I have previously advised you of my view that your firm is not detached due to substantial monies owing to it by Nacio Systems, Inc. and that this action is malicious and unfounded. However, on a substantive basis, I have also advised you this action is simply an effort by Mr. Goldenberg at an "indirect appeal of the arbitration award already entered against Nacio Systems, Inc., a Nevada Corporation, in favor of Mr. Gottlieb which currently has a balance in excess of \$250,000.

With respect to the arbitration clause, Nacio Systems, Inc. already consented to arbitration before the American Arbitration Association (AAA) with respect to Mr. Gottlieb's own claims under his written employment agreement which calls for arbitration under the rules of the American Arbitration Association. Therefore, there has already been consent to AAA and already an arbitration which has been confirmed by the court and uncontested by Nacio Systems, Inc. Therefore, it is completely wasteful for Nacio Systems, Inc. to refuse to stipulate to further binding arbitration before the American Arbitration Association on what are, in effect, counterclaims that should have been brought in the underlying arbitration already concluded, and which are barred by the doctrine of collateral estoppel.

You propose that we use some tribunal other than AAA to determine whether or not the claims of the above complaint are arbitrable under the AAA based arbitration clause. That is simply wasteful and unnecessary due to the nature of the arbitration clause, and the existing history whereby Nacio Systems, Inc. has previously consented to the arbitrability of disputes between itself

LAW OFFICES OF  
MCNEIL, SILVEIRA, RICE & WILEY

and Mr. Gottlieb, arising out of his employment relationship and the AAA arbitration agreement he had with Nacio Systems, Inc.

Finally, because AAA has already heard the matter, it is appropriate to continue to have AAA act as arbitrator as previously consented to by Nacio Systems, Inc. Your effort to "forum shop" with a different arbitration tribunal is in appropriate contrary to the language in terms of the arbitration clause before AAA using AAA rules, and prior arbitration before AAA.

Very truly yours,



MARK J. RICE

MJR/nv

Enclosure

cc: Herbert Gottlieb (without enclosure)



Law Offices Of  
McNEIL, SILVEIRA, RICE & WILEY  
55 Professional Center Parkway, Suite A  
San Rafael, California 94903  
(415) 472-3434  
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**FACSIMILE TRANSMISSION COVER SHEET**

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**DATE:** April 11, 2007  
**TO:** Ariana Seldman Hawbecker, Esq.  
**FAX NO.:** (510) 832-1486  
**FROM:** Mark J. Rice, Esq.  
**RE:** Gottlieb/Nacio Systems, Inc., A Nevada Corporation  
AAA Case No. 74-166-0046806 DECR

**Number of Pages, Including This Sheet:** 4

**If any pages are missing, please telephone Nina Vallindras immediately at (415) 472-3434.**

**COMMENTS:** ORIGINALS TO FOLLOW BY MAIL

\* \* \* COMMUNICATION RESULT REPORT ( APR. 11. 2007 3:17PM ) \* \* \*

TTI MCNEIL SILVEIRA RICE

TRANSMITTED/STORED: APR. 11. 2007 3:14PM

FILE MODE	OPTION	ADDRESS (GROUP)	RESULT	PAGE
188 MEMORY TX		15108321486	OK	4/4

## REASON FOR ERROR

E-1) HANG UP OR LINE FAIL  
E-3) NO ANSWER

E-2) BUSY

E-4) NO FACSIMILE CONNECTION

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**DATE:** April 11, 2007  
**TO:** Ariana Seldman Hawbecker, Esq.  
**FAX NO.:** (510) 832-1486  
**FROM:** Mark J. Rice, Esq.

MARK J. RICE (SBN 124934)  
 McNEIL, SILVEIRA, RICE & WILEY  
 55 Professional Center Parkway, Suite A  
 San Rafael, CA 94903  
 Telephone: (415) 472-3434  
 Facsimile: (415) 472-1298

Attorneys for Petitioner HERBERT M. GOTTLIEB

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MARIN - UNLIMITED CIVIL JURISDICTION

NACIO SYSTEMS, INC., a Nevada  
 Corporation, and DOES 1 to 10, inclusive,

Plaintif,

vs.

HERBERT M. GOTTLIEB,

Defendant.

Case No. CV070474

[PROPOSED] ORDER UPON STIPLUTION  
 STAYING PROCEEDING PENDING  
 ARBITRATION BETWEEN THE PARTIES;  
 AND ORDER PROPELLING ARBITRATION  
 BETWEEN THE PARTIES PURSUANT TO  
 THEIR AGREEMENT.

STIPULATION

WHEREAS, there is a binding arbitration clause between Herbert Gottlieb and Nacio Systems, Inc. (formerly Interactive Data Holding Group, Inc.) requiring binding arbitration by the American Arbitration Association of any dispute between them;

WHEREAS, a confirmed arbitration award exists in favor of Gottlieb against Nacio Systems, Inc., a Nevada Corporation, arising from Mr. Gottlieb's employment with Nacio Systems, Inc. in Marin Superior Court, Action No. CV065571;

WHEREAS Plaintiff Nacio Systems, Inc., a Nevada Corporation alleges that in the above-entitled Complaint that Herbert M. Gottlieb has violated his fiduciary duties against Nacio Systems, Inc., in the capacity of its employee of Nacio Systems, Inc.;

THEREFORE, the parties, through court, hereby stipulate as follows:

1. To an Order compelling arbitration of the dispute alleged in the Complaint and,
2. That this action be stayed pending completion of said arbitration up to and

1  
 STIPULATION AND [PROPOSED] ORDER



1 including final award.

2 THE PARTIES HAVE SO STIPULATED.

3  
4  
5 DATED: \_\_\_\_\_

ARIANA SELDMAN HAWBECKER  
DONAHUE GALLAGHER WOODS LLP  
Attorneys for Plaintiff NACIO SYSTEMS, INC., A  
Nevada Corporation

6  
7  
8  
9 DATED: February 15, 2007

Mark J. Rice  
MARK J. RICE  
McNEIL, SILVEIRA, RICE & WILEY  
Attorneys for Defendant HERBERT GOTTLIEB

10  
11  
12 ORDER

13 Good cause appearing and upon the stipulation of the parties, it is hereby ORDERED  
14 that the within action be stayed pending binding arbitration between the parties before the  
15 American Arbitration Association; and that this Court further orders that the within dispute  
16 alleged in this action is subject to binding arbitration pursuant to the agreement of the parties  
17 before the American Arbitration Association and that this Court hereby orders this action referred  
18 to binding arbitration before the American Arbitration Association based upon the parties  
stipulation hereto, and contractual agreement.

19 SO ORDERED.

20  
21 DATED: \_\_\_\_\_

JUDGE OF THE SUPERIOR COURT



**EXHIBIT 2**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): <input type="checkbox"/> Recording requested by and return to: TELEPHONE: (415)472-3434 McNeil, Silveira, Rice, Wiley & West 55 Professional Center Parkway, Suite A San Rafael, CA 94903		FOR RECORDER'S USE ONLY	
NAME OF COURT MARIN COUNTY SUPERIOR COURT 3501 CIVIC CENTER DRIVE ROOM 113 P.O. Box 4988 SAN RAFAEL, CA 94903		LEVYING OFFICER (Name and Address):  Robert T. Doyle, Sheriff Marin County Sheriff's Office 3501 Civic Center Drive Room #145 San Rafael, CA. 94903	
PLAINTIFF: Herbert M. Gottlieb DEFENDANT: Nacio Systems, Inc., a Nevada Corporation			
<b>MEMORANDUM OF GARNISHEE</b> (Attachment Enforcement of Judgment)			
<input checked="" type="checkbox"/> <b>Execution (Money Judgment)</b>		<input type="checkbox"/> <b>Sale</b>	
PLEASE REFER TO THIS NUMBER WHEN CORRESPONDING WITH SHERIFF		LEVYING OFFICER FILE NO. 07000916 COURT CASE NO. CV065571	
<b>TO THE PERSON NOTIFIED (name):</b>			
<b>GARNISHEE (Name and address)</b> First Republic Bank 1099 4th Street San Rafael, CA 94901		<b>JUDGEMENT DEBTOR (Name and address)</b> Nacio Systems, Inc., a Nevada Corporation 55 Leveroni Court Novato, CA 94949	

**NOTICE TO PERSON SERVED WITH WRIT AND NOTICE OF LEVY OR NOTICE OF ATTACHMENT:** This memorandum must be completed and mailed or delivered to the levying officer within 10 days after service on you of the writ and notice of levy or attachment unless you have fully complied with the levy. Failure to complete and return this memorandum may render you liable for the costs and attorney fees incurred in obtaining the required information.

**-RETURN ALL COPIES OF THIS MEMORANDUM TO THE LEVYING OFFICER-**

**SOCIAL SECURITY NUMBER:**

This memorandum does *not* apply to garnishment of earnings

1. If you will not deliver to the levying officer any property levied upon, describe the property and the reason for not delivering it:

N/A

2. For writ of execution only Describe any property of the judgment debtor not levied upon that is in your possession or under your control:

N/A

3. If you owe money to the judgment debtor which you will not pay to the levying officer paying it to the levying officer:

N/A

**MARIN COUNTY SHERIFF'S DEPARTMENT-CIVIL DIVISION**  
 We received \$26,940.27 in partial/full satisfaction on your writ

from First Republic Bank

All monies collected will be remitted upon completion of our accounting process.

By JE Date 6/25/07

(Continued on Reverse)

**MEMORANDUM OF GARNISHEE**  
 (Attachment -- Enforcement of Judgment)  
**RETURN TO LEVYING OFFICER**

SHORT TITLE: Herbert M. Gottlieb  
vs. Nacio Systems, Inc., a Nevada Corporation

Levy Officer File Number:  
07000916

Court Case Number:  
CV065571

4. Describe the amount and terms of any obligation owed to the judgment debtor that is levied upon but is not yet due and payable:

N/A

5. For Writ of execution only Describe the amount and terms of any obligation owed to the judgment debtor that is not levied upon:

N/A

6. Describe any claims and rights of other persons to the property or obligation levied upon that are known to you and the names and addresses of the other persons:

N/A

#### DECLARATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

Dawntage  
(TYPE OR PRINT NAME)

D. J. J. J.  
(SIGNATURE)

If you need more space to provide the information required by this memorandum, you may attach additional pages.  
Total number of pages attached:

**EXHIBIT 3**

Scan in GTHel

**NACIO LIENS**

IRS Tax Lien  
04/18/07  
2007 - 0023608

69,402.13

Cal Release of Tax Lien  
03/19/07  
2007- 0016859

2,058.35  
02/09/07  
2007-0008071

FEIN - 6803379420  
FTB - 1835336000

Marin County Tax Lien  
02/16/07  
2007- 0009532

31,705.06

Marin County Tax Collector  
2006- 0007488

21,969.41

**EXHIBIT 4**

AMERICAN ARBITRATION ASSOCIATION

HERBERT M. GOTTLIEB,

Claimant,

vs.

NACIO SYSTEMS, INC.,  
formerly INTERACTIVE  
HOLDINGS GROUP, INC.,

Respondent.

CERTIFIED COPY

---oOo---

TRANSCRIPT OF PROCEEDINGS

---oOo---

October 16, 2006

Taken at the location of:  
American Arbitration Association  
One Sansome Street, 16th Floor  
San Francisco, California

---oOo---

Reported by  
JOAN T. GRIER, CSR #8958

M. P. RADOCY, INC.  
CERTIFIED SHORTHAND REPORTERS  
737 Channing Avenue  
PALO ALTO, CALIFORNIA 94301  
TELEPHONE (650) 325-4393 FAX (650) 325-4394



A P P E A R A N C E S

ARBITRATOR: JOHN KAGEL, ESQUIRE

P.O. Box 50787

Palo Alto, California 94303

For Claimant:

McNEIL, SILVEIRA, RICE & WILEY

55 Professional Center Parkway, Suite A

San Rafael, California 94903

(415) 472-3434

By: Mark J. Rice, Attorney at Law

For Respondent:

DONAHUE, GALLAGHER, WOODS

300 Lakeside Drive, Suite 1900

Oakland, CA 94612

(510) 451-0544

By: William H. Green, Attorney at Law

ALSO PRESENT: Herbert M. Gottlieb

Murray Goldenberg

1 respondent?

2 MR. GREEN: No. Maybe we can take a two-minute  
3 break and let me talk to Mr. Rice about something.

4 THE ARBITRATOR: Go ahead.

5 Off the record.

6 (Recess taken from 10:29 to 11:12 a.m.)

7 THE ARBITRATOR: Call your witness, Mr. Rice.

8 (Discussion off the record.)

9 MR. RICE: I'm going to call Mr. Goldenberg  
10 first.

11 THE ARBITRATOR: Mr. Goldenberg, would you come  
12 forward, please, and have a seat.

13 Do you wish the witnesses sworn?

14 MR. RICE: Yes, please.

15 (Witness sworn.)

16 → MURRAY GOLDENBERG,

17 Called as an adverse witness by the Claimant,  
18 testified as follows:

19 THE ARBITRATOR: Your name, sir.

20 THE WITNESS: Murray Goldenberg.

21 THE ARBITRATOR: Mr. Rice, I assume you're  
22 calling Mr. Goldenberg as an adverse witness.

23 MR. RICE: I am calling him as an adverse  
24 witnesses.

25 THE ARBITRATOR: Mr. Goldenberg, you've been

1                   MR. RICE: Q. How many -- at the time of  
2 Mr. Gottlieb's departure, what were the total number of  
3 employees within Nacio?

4                   A. Within Nacio?

5                   Q. Yes.

6                   A. ~~Excluding our after-hours staff, probably 25.~~

7                   Q. Okay. Can you turn your attention to Exhibit F  
8 again. And we're almost concluded. Where Mr. -- and I  
9 know you indicated you weren't sure whether you received  
10 this or not, but let me see if I can refresh your  
11 recollection.

12                   He writes:

13                   "In light of the renewal I am also  
14 concerned about the reduction of staff  
15 under me, and whether you plan to  
16 increase or change the duties of my  
17 position. Duty changes require my  
18 approval under the employment contract.  
19 I need to know if any are planned.  
20 Could you please discuss with me your  
21 plans for my duties."

22                   Do you have a recollection now of having heard  
23 that you did receive this e-mail?

24                   A. No, I don't have a recollection of receiving  
25 this e-mail, but I do recollect Herb and I having a

1 discussion, and I made it very clear to him that his  
2 duties were unchanged; that he joined principally to  
3 generate sales for that division.

4 We were unable to generate sales to anybody's  
5 satisfaction because the software was old and worn, and  
6 it had to be refreshed. And Herb worked with one of our  
7 other folks to make a lot of good changes and put a lot  
8 of good things in place.

9 And it was our intention to have him continue  
10 generating sales and doing exactly that without the  
11 responsibilities of worrying about accounting and so on,  
12 which is what I agreed I would look after.

13 Q. But Herb did complain that he felt that he was  
14 being undersupported and undermined by your resource  
15 changes?

16 A. He didn't complain about that specifically. We  
17 had discussions from time to time about where we were  
18 going and what we wanted to do with Attest, but he never  
19 complained that he was being undermined.

20 Q. On Friday when we had discussions, you  
21 complained that Mr. Gottlieb had engaged in some behavior  
22 you thought was improper. Do you recall that?

23 A. Yes, I do.

24 Q. Are you claiming that that precludes you or  
25 entitles you not to pay commissions that are due?

1           A.   No.   Absolutely not.   One has nothing to do  
2   with the other.   I believe we owe him the money for the  
3   commissions.   And given time, we will pay it.

4           MR. RICE:   Okay.   I'd like to introduce the  
5   UCC-1 as -- we marked my brief as 2, so that would be  
6   "U."   I'm introducing it for the truth of the matter  
7   asserted as an operative document.

8           THE ARBITRATOR:   Any objection?

9           MR. GREEN:   One moment.

10          No objection.

11          THE ARBITRATOR:   It's admitted.

12                       (Whereupon, Claimant's Exhibit U was  
13                       marked for identification and received  
14                       into evidence.)

15          MR. RICE:   I have no further questions for  
16   Mr. Goldenberg.

17          THE ARBITRATOR:   Can I ask a question?

18                       I'm unclear what your role was.   You're a  
19   consultant and CFO.   Is that correct?

20          THE WITNESS:   That's correct.

21          THE ARBITRATOR:   Sounds to me like you're  
22   running the show.   What were you doing?

23                       THE WITNESS:   I was the most senior person on  
24   premise.   The company has a CEO and a president.   The CEO  
25   spends some time on technical matters because she's an

1 engineer. But basically on day-to-day business matters,  
2 I'm the person that they look to.

3 THE ARBITRATOR: That's helpful to me. Thank  
4 you.

5 I thought we'd go to 1:00 and maybe break for  
6 lunch.

7 DIRECT EXAMINATION BY MR. GREEN:

8 MR. GREEN: Q. In your opinion,  
9 Mr. Goldenberg, was Mr. Gottlieb terminated?

10 A. No.

11 Q. Why do you say that?

12 A. Because Mr. Gottlieb came to me and said he'd  
13 like to move on.

14 Q. Was he more specific?

15 A. No.

16 Q. Was he, in your opinion, constructively  
17 terminated?

18 A. No.

19 Q. Were his job duties taken away?

20 A. No.

21 Q. Was he able to still perform his duties even  
22 though a number of subordinates were either terminated or  
23 resigned?

24 A. Yes.

25 Q. How was he able to do that without the support?

1           A.    The software that we had was, as I said  
2           earlier, shop worn and had to be renewed.   And we  
3           undertook that renewal process, which Mr. Gottlieb and  
4           another person had suggested or told me would cost about  
5           \$60,000 and take three months.   \$400,000 later and, I  
6           guess, a year later, year and a half later, we're still  
7           not there.

8                   And so we could not do some of the things  
9           economically that Mr. Gottlieb wanted to do like a press  
10          tour, because there was no reason to do it until the new  
11          software became available.

12                Mr. Gottlieb was asked to continue selling as  
13           best he could given the quality of the product and to  
14           work with people on renewing maintenance contracts.   In  
15           other words, continue his sales role and participate with  
16           the overall management at Nacio.

17                He was invited and was part of every management  
18           meeting.   He contributed not only to the Attest side but  
19           expressed opinions on the professional and on the systems  
20           side, which are our other two divisions.

21                And aside from the fact that people were moved  
22           around and we changed the entire structure of the  
23           company, not just for Attest but also for the  
24           professional services group, he was asked to continue  
25           doing what he did best.



1 Q. Did he continue doing that?

2 A. I thought he did.

3 Q. Did he eventually leave the company?

4 A. Yes, he did.

5 Q. What was your understanding of the terms under  
6 which he left the company?

7 A. He left the company with the request that he be  
8 allowed to continue working for us as a consultant, which  
9 we appreciated and paid him for. I always told Herb that  
10 I liked him as an individual and thought highly of his  
11 skills and wanted him to stay.

12 He chose to take a position with somebody that  
13 I will call a competitor while he was still working for  
14 us, which I disagreed with and told him I disagreed with.

15 Q. Let's go back to the commission payment that  
16 you said was owed but not payable. Why is it not  
17 payable, or when did it become payable?

18 A. Well, it was my understanding at the time we  
19 did the documents, and it never really became an issue  
20 until Herb was ready to leave, that one month out of 12  
21 doesn't constitute a month in which all the commissions  
22 that have been accrued should be payable.

23 And so I felt that we should have an average of  
24 three months, four months, something that would make  
25 sense. Not that he wouldn't earn the money. He would

1 continue to earn the money, but that we would only pay  
2 it -- because cash flow was very critical, and we would  
3 only pay the commissions when the cash is available.

4 Q. And is the cash available today?

5 A. No.

6 Q: Do you know when the cash will be available?

7 A. I'm meeting with some people this week. It's  
8 supposed to be tomorrow, and I'm hoping that we're going  
9 to be able to put a financing in place for Nacio in its  
10 own right as opposed to Nacio's waiting for Encompass to  
11 fund it. And it was my intention to generate some funds  
12 out of that funding for Mr. Gottlieb, but I can't commit  
13 to it until I know what the amount is and until it's a  
14 done deal.

15 Q. Is it your intent that when the cash is  
16 available that Mr. Gottlieb will be -- that when the  
17 funds become available, then at that point then the  
18 commissions do become payable and then Mr. Gottlieb will  
19 be paid?

20 A. I don't believe they become payable, because  
21 the division has never achieved an average \$60,000 even  
22 for two months in a row. But in order to bring this to a  
23 head and live up to our obligation, I want to pay him and  
24 get him out of my hair.

25 Q. ~~So it's your position that because the \$60,000~~

**EXHIBIT 5**

SECURITIES ACT OF 1933 Release No. 7849 / April 10, 2000

Page 1 of 6

[Home](#) | [Previous Page](#)

U.S. Securities and Exchange Commission

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

SECURITIES ACT OF 1933  
 Release No. 7849 / April 10, 2000

SECURITIES EXCHANGE ACT OF 1934  
 Release No. 42656 / April 10, 2000

INVESTMENT COMPANY ACT OF 1940  
 Release No. 24384 / April 10, 2000

ADMINISTRATIVE PROCEEDING  
 File No. 3-10184

<p>In the Matter of</p> <p>NOVA COMMUNICATIONS LTD.,          formerly known as FIRST COLONIAL          VENTURES LTD., and          MURRAY W. GOLDENBERG,          Respondents.</p>	<p>ORDER INSTITUTING PUBLIC          ADMINISTRATIVE AND CEASE-AND-          DESIST PROCEEDING, MAKING          FINDINGS AND IMPOSING A CEASE-          AND-DESIST ORDER AND SANCTIONS</p>
---	---

## I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that a public cease-and-desist proceeding pursuant to Section 9(f) of the Investment Company Act of 1940 ("Investment Company Act"), Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") be instituted against Nova Communications Ltd., formerly known as First Colonial Ventures Ltd. (hereinafter referred to as "FCVL"), and Murray W. Goldenberg ("Goldenberg"); and that a public administrative proceeding be instituted against Goldenberg pursuant to Section 9(b) of the Investment Company Act.

## II.

In anticipation of the institution of this proceeding, FCVL and Goldenberg have each submitted an Offer of Settlement, each of which the Commission has determined to accept. Solely for the purpose of this proceeding and any other proceeding brought by or on behalf of the Commission or in which the Commission is a party, and without admitting or denying the findings contained herein (except that FCVL and Goldenberg admit the findings in III.A.1. and III.A.2. below and the jurisdiction of the Commission over each of them and over the subject matter of this proceeding), FCVL and

SECURITIES ACT OF 1933 Release No. 7849 / April 10, 2000

Page 2 of 6

Goldenberg hereby each consent to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceeding, Making Findings and Imposing a Cease-and-Desist Order and Sanctions ("Order") set forth below.

Accordingly, **IT IS ORDERED** that a proceeding pursuant to Sections 9(b) and 9(f) of the Investment Company Act, Section 8A of the Securities Act and 21C of the Exchange Act be, and hereby is, instituted.

### III.

On the basis of this Order and the Offers of Settlement submitted by FCVL and Goldenberg, the Commission finds that:

#### A. RESPONDENTS

1. Nova Communications Ltd., formerly known as First Colonial Ventures Ltd. (hereinafter referred to as "FCVL"), a Nevada corporation, is located in Los Angeles, California. In January 1995, FCVL registered with the Commission as a closed-end investment company. In June 1995, FCVL filed an election to operate as a business development company ("BDC") under Section 54(a) of the Investment Company Act. As a result of FCVL's election to operate as a BDC, the Commission, on its own motion, deregistered the company in February 1996. See First Colonial Ventures Ltd., Investment Company Act Rel. No. 21681 (Jan. 17, 1996) (notice) and Investment Company Act Rel. No. 21750 (Feb. 13, 1996) (order). On July 21, 1999, FCVL merged with Nova Communications Ltd. On July 29, 1999, FCVL filed a Notification of Withdrawal as a BDC pursuant to Section 54(c) of the Investment Company Act. Effective August 11, 1999, FCVL changed its name to Nova Communications Ltd. The stock is now quoted on the NASD's over-the-counter Bulletin Board under the symbol "NCVM."

2. Murray W. Goldenberg ("Goldenberg"), is 59 years old and resides in Playa del Rey, California. He is the President, Chief Executive Officer and a Director of FCVL. During the period that FCVL operated as a BDC, Goldenberg was the Chairman of the Board, President, Secretary, Treasurer and a Director of FCVL and controlled the management and operations of FCVL.

#### B. FACTS

1. In 1995 and 1996, FCVL engaged in four transactions: (1) in July 1995, FCVL acquired a 50% interest in First Colonial Funds, an investment company; (2) in July 1995, FCVL acquired a lease in the oil and gas rights for property located in Texas; (3) in August 1995, FCVL acquired a 25% interest in Colonial Funds, a Bahamian company; and (4) in November 1996, FCVL acquired certain assets and liabilities of Acclaim Studios, LLC.

2. At the time that FCVL made each of the four acquisitions described above, FCVL was operating as a BDC pursuant to its election under section 54(a) of the Investment Company Act. Section 55(a) of the Investment Company Act prohibited FCVL, as a BDC, from acquiring any assets other than "BDC Qualifying Assets," as defined herein, or noninvestment assets used in the operation of its business, unless at least 70% of FCVL's total



assets, exclusive of noninvestment assets used in the operation of its business, were BDC Qualifying Assets. BDC Qualifying Assets are defined as: (a) securities issued by an "eligible portfolio company," as defined by Section 2(a)(46) of the Investment Company Act; (b) securities of an issuer that is not an eligible portfolio company only because of its failure to meet certain specified criteria (a "special portfolio company"); (c) securities acquired in exchange for or distributed with respect to securities issued by eligible portfolio companies or special portfolio companies or pursuant to the exercise of options relating to such securities; or (d) cash or cash items, Government securities, or high quality debt securities maturing in a year or less. Under Sections 2(a)(46) and 55(a), neither an eligible portfolio company nor a special portfolio company may be organized under the laws of a jurisdiction outside the United States or be an investment company, as defined in Section 3 of the Investment Company Act (other than a small business investment company licensed by the Small Business Administration and which is a wholly-owned subsidiary of the BDC) or be a company that would be an investment company except for the exclusions in Section 3(c) of the Investment Company Act.

3. At the time that FCVL made each of the four acquisitions described above, less than 70% of FCVL's total assets, exclusive of noninvestment assets used in the operation of its business, were BDC Qualifying Assets. None of the four acquisitions was a BDC Qualifying Asset or a noninvestment asset used in the operation of FCVL's business. The First Colonial Funds securities were issued by an investment company; the Colonial Funds securities were issued by a company organized under the laws of the Bahamas; and the oil and gas rights and the assets of Acclaim Studios, LLC were not securities. Therefore, each of the four acquisitions was unlawful under Section 55(a).

4. Goldenberg made all the decisions regarding the investments made by FCVL.

5. Section 23(b) of the Investment Company Act prohibited FCVL from selling any common stock of which it was the issuer at a price below the net asset value of such stock, exclusive of any distributing discount or commission. In January 1996, FCVL issued over three million FCVL shares to Colonial Funds for no consideration. FCVL's net asset value per share was \$.53 in 1995 and \$.31 in 1996. By issuing the shares for no consideration, FCVL issued the shares below net asset value.<sup>1</sup>

6. As a BDC, FCVL was required to maintain certain books and records regarding securities transactions, as more fully described in Section 31 of the Investment Company Act and Rule 31a-1 thereunder. FCVL failed to maintain required journals or other records of original entry, containing an itemized daily record of all purchases and sales of securities (including sales and redemptions of its own securities) and all receipts and deliveries of securities. In addition, FCVL failed to maintain, as required, separate ledger accounts for securities in transfer, securities in physical possession, securities borrowed and securities loaned. Goldenberg made all the decisions regarding the books and records maintained by FCVL.

7. After becoming a BDC, FCVL offered and sold securities pursuant to Regulation E, an exemption from registration for securities available to BDCs. Between August 1995 and December 1997, FCVL filed six

notifications on Form 1-E with the Commission relating to the offers and sales of its common stock pursuant to Regulation E. FCVL filed these notifications on August 31, 1995, September 29, 1995, October 20, 1995, February 12, 1996, February 21, 1996 and December 30, 1997. FCVL sold common stock in connection with the first five notifications. Under the provisions of Regulation E, FCVL was required to include certain information in its offering circulars. FCVL's offering circulars used in connection with the first five offerings did not include either a balance sheet as of a date within 90 days prior to the date of filing or income statements up to the date of the balance sheet, both of which are required by Regulation E. The offering circulars filed in 1996 also did not include income statements for the previous fiscal year. FCVL was also required to file reports of its sales on Form 2-E within thirty days after the end of each six-month period following the date of the original offering circular and to make a final report upon the completion or termination of each offering. FCVL failed to file reports of its sales on Form 2-E with regard to all six offerings and failed to file final reports upon the termination of each of these offerings.

8. Goldenberg made all the decisions regarding the securities offerings made by FCVL. Goldenberg signed five of the six notifications on Form 1-E filed by FCVL.

9. FCVL did not file a registration statement with the Commission before the sale of the securities described in paragraph III.B.7.

10. As a BDC, FCVL was required to file annual reports on Form 10-K within 90 days after the end of the fiscal year and quarterly reports on Form 10-Q within 45 days after the end of the first three quarters of the fiscal year. Since becoming a BDC, FCVL failed to file certain periodic reports: the Forms 10-Q for 1996, the Forms 10-Q for 1998 and the Form 10-K for 1998. FCVL also failed to file the following periodic reports on a timely basis: the Form 10-Q for September 30, 1995, the Form 10-K for 1995, the Form 10-K for 1996, each of the Forms 10-Q for 1997, the Form 10-K for 1997 and each of the Forms 10-Q for 1999.

11. Goldenberg was responsible for FCVL's periodic filings and signed all of FCVL's periodic reports.

12. Goldenberg has submitted a sworn financial statement and other evidence and has asserted his financial inability to pay a civil penalty. The Commission has reviewed the sworn financial statement and other evidence provided by Goldenberg and has determined that Goldenberg does not have the financial ability to pay a civil penalty.

### C. VIOLATIONS

1. By virtue of the conduct described in paragraphs III.B.1. through III.B.6., FCVL violated Sections 23(b), 31(a) and 55(a) of the Investment Company Act and Rule 31a-1 thereunder:

2. By virtue of the conduct described in paragraphs III.B.7. through III.B.9., FCVL violated Sections 5(a) and 5(c) of the Securities Act.



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3. By virtue of the conduct described in paragraph III.B.10 and III.B.11., FCVL violated Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder.

4. By virtue of the conduct described in paragraphs III.B.1. through III.B.6., Goldenberg caused and willfully aided and abetted FCVL's violations of Sections 23(b), 31(a) and 55(a) of the Investment Company Act and Rule 31a-1 thereunder.

5. By virtue of the conduct described in paragraphs III.B.7. through III.B.9., Goldenberg willfully violated Sections 5(a) and 5(c) of the Securities Act.

6. By virtue of the conduct described in paragraphs III.B.10 and III.B.11., Goldenberg caused and willfully aided and abetted FCVL's violations of Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder.

#### IV.

Based on the foregoing, the Commission deems it appropriate to accept the Offer of Settlement submitted by FCVL and appropriate and in the public interest to accept the Offer of Settlement submitted by Goldenberg.

Accordingly, **IT IS HEREBY ORDERED** that:

1. Pursuant to Section 9(f) of the Investment Company Act, Section 8A of the Securities Act and Section 21C of the Exchange Act, FCVL cease and desist from committing or causing any violation and any future violation of Sections 23(b), 31(a) and 55(a) of the Investment Company Act and Rule 31a-1 thereunder, Sections 5(a) and 5(c) of the Securities Act and Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder;

2. Pursuant to Section 9(f) of the Investment Company Act, Section 8A of the Securities Act and 21C of the Exchange Act, Goldenberg cease and desist from  
(1) causing any violation and any future violation of Sections 23(b), 31(a) and 55(a) of the Investment Company Act and Rule 31a-1 thereunder and Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder; and (2) committing or causing any violation and any future violation of Sections 5(a) and 5(c) of the Securities Act; and

3. Pursuant to Section 9(b) of the Investment Company Act, Goldenberg is prohibited from serving or acting as an employee, officer or director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

4. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Goldenberg provided accurate and complete financial information at the time such representations were made; (2) determine the amount of the civil penalty to be imposed; and (3) seek any additional remedies that the Commission would be authorized to impose in this proceeding if Goldenberg's offer of settlement had not been accepted. No

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other issues shall be considered in connection with this petition other than whether the financial information provided by Goldenberg was fraudulent, misleading, inaccurate or incomplete in any material respect, the amount of civil penalty to be imposed and whether any additional remedies should be imposed. Goldenberg may not, by way of defense to any such petition, contest the findings in this Order or the Commission's authority to impose any additional remedies that were available in the original proceeding.

By the Commission.

Jonathan G. Katz

Secretary

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#### Footnotes

- 1 None of the exceptions set forth in Sections 23(b) and 63(2) of the Investment Company Act applied with respect to the issuance of these shares by FCVL.

<http://www.sec.gov/litigation/admin/33-7849.htm>

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